

# **EXHIBIT F**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 SECURITIES INVESTOR PROTECTION  
4 CORPORATION, IRVING H. PICARD,

5 Plaintiffs,

6 v. 12 MC 115 (JSR)

7 BERNARD L. MADOFF INVESTMENT  
8 SECURITIES LLC, et al.,

9 Defendants. Conference

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10 New York, N.Y.  
11 October 12, 2012  
12 4:40 p.m.

13 Before:

14 HON. JED S. RAKOFF

15 District Judge

16 APPEARANCES

17 NATHANAEL S. KELLEY  
18 Attorney for SIPC

19 BAKER & HOSTETLER LLC  
20 Attorneys for Trustee Picard  
BY: OREN J. WARSHAVSKY  
LAN HOANG

21 ANDERSON KILL & OLICK, P.C.  
22 Attorneys for Initial Transferees  
BY: TODD E. DUFFY  
DENNIS J. NOLAN

23 LATHAM & WATKINS LLP  
24 Attorneys for Subsequent Transferees  
25 BY: CHRISTOPHER HARRIS

1 (Case called)

2 THE COURT: I'm going to try to keep this as short as  
3 possible because I don't think the economy can stand having to  
4 pay for all the lawyers in this room. This, unlike some of the  
5 issues that have come before the Court involving the Madoff  
6 matters, is one that the Court has previously dealt with.  
7 Between that and the extensive briefing, I have reached some  
8 tentative conclusions, although I will make no final  
9 conclusions until I've heard oral argument and issued a written  
10 opinion.

11 My tentative conclusion is that the standard that the  
12 trustee must meet to establish lack of good faith under a  
13 willful blindness approach, as opposed to an actual intent  
14 approach, is that the defendant must subjectively believe that  
15 there is a high probability that a fact exists and the  
16 defendant must then consciously turn away or otherwise take a  
17 deliberate step or decision to avoid learning of that fact.  
18 Essentially, with a very slight massaging, the test set forth  
19 in Global-Tech Appliances v. SEB, 131 S.Ct. 2060, 2070, a 2011  
20 decision of the Supreme Court.

21 I am also of the view that in an action brought under  
22 section 550, the burden is on the trustee to -- I'm sorry. I  
23 think I'm overstating where my head is at on the second thing.  
24 I'm not sure whether the burden of establishing good faith is  
25 on the defendant or the burden of establishing lack of good